

CHAPTER NO. 233

HOUSE BILL NO. 1417

By Representatives Davidson, Ronnie Davis

Substituted for: Senate Bill No. 1233

By Senators Haynes, Harper, Crowe

AN ACT to amend Tennessee Code Annotated, Title 49, Chapter 7, Part 8, relative to the Tennessee Baccalaureate Education System Trust Act.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 49-7-802(1), is amended by deleting the same in its entirety and by substituting instead the following:

(1) "Beneficiary", for purposes of the educational savings plan as defined in subdivision (3) of this section, means an individual designated under a tuition contract as the individual entitled to apply contributions and earnings accrued in a savings account established under the contract to the payment of that individual's undergraduate, graduate and professional tuition, and "other educational costs" as that term is defined in subdivision (6) of this section. For purposes of the educational services plan as defined in subdivision (4) of this section, "beneficiary" means an individual designated under a tuition contract as the individual entitled to apply tuition units purchased under the contract to the payment of that individual's undergraduate, graduate and professional tuition, and "other educational costs" as that term is defined in subdivision (6) of this section. For purposes of the educational services plan, the beneficiary or the purchaser must have been a resident of this state at the time the contract was entered into by the purchaser and the board;

SECTION 2. Tennessee Code Annotated, Section 49-7-802, is amended by adding the following as new subdivisions (3) and (4), and by redesignating the existing subdivisions accordingly:

(3) "Educational savings plan" means a plan which permits individuals to make contributions to an account that is established by a purchaser for a designated beneficiary that entitles the beneficiary to apply such contributions and earnings thereon to the payment of that beneficiary's undergraduate, graduate and professional tuition, and "other educational costs" as that term is defined in subdivision (6) of this section.

(4) "Educational services plan" means a plan which permits individuals to purchase a tuition unit or units under a tuition contract entered into between a purchaser and the board on behalf of a designated beneficiary that entitles the beneficiary to apply such units to the payment of that beneficiary's undergraduate, graduate and professional tuition, and "other educational costs" as that term is defined in subdivision (6) of this section.

SECTION 3. Tennessee Code Annotated, Section 49-7-802, is amended by deleting the semicolon (;) at the end of the current subdivision (5) and by substituting instead the following:

The program shall be comprised of two (2) types of tuition plans: the educational savings plan as defined in subdivision (3) of this section and the educational services plan as defined in subdivision (4) of this section. Except as otherwise provided, all terms, conditions, and limitations shall apply equally to both types of tuition plans;

SECTION 4. Tennessee Code Annotated, Section 49-7-802, is further amended by deleting the current subdivision (6) in its entirety and by substituting instead the following:

"Purchaser", for purposes of the educational savings plan, means an individual who enters into a tuition contract under this part for the creation and deposit of contributions to a savings account on behalf of a beneficiary. For purposes of the educational services plan, "purchaser" means an individual who enters into a tuition contract under this part for the purchase of a tuition unit or units on behalf of a beneficiary;

SECTION 5. Tennessee Code Annotated, Section 49-7-802, is amended by deleting from the current subdivision (9) the words and figures "as defined in subdivision (4)" and by substituting instead the words, figures and punctuation "as defined in subdivision (6), through either the educational savings plan or the educational services plan".

SECTION 6. Tennessee Code Annotated, Section 49-7-802, is amended by deleting from the current subdivision (10) the word "program" and by substituting instead the words "educational services plan".

SECTION 7. Tennessee Code Annotated, Section 49-7-803, is amended by deleting the third sentence thereof in its entirety and by substituting instead the following:

It is, therefore, the legislative intent of this part to establish an educational trust program as an agency and instrumentality of the state to assist students in saving for the tuition cost of attending colleges and universities, and thereby to encourage such students to attend a college or university.

SECTION 8. Tennessee Code Annotated, Section 49-7-804(d), is amended by deleting from the third sentence thereof the figures "49-7-805(15)" and by substituting instead the figures "49-7-805(16)".

SECTION 9. Tennessee Code Annotated, Section 49-7-804(e), is amended by deleting from the second sentence thereof the figures "49-7-824" and by substituting instead the figures "49-7-825".

SECTION 10. Tennessee Code Annotated, Section 49-7-805(2), is amended by adding immediately before the semicolon at the end thereof the words "and educational savings accounts".

SECTION 11. Tennessee Code Annotated, Section 49-7-805(11), is amended by deleting it in its entirety and by substituting instead the following:

(11) Impose limits on the number of tuition units which may be purchased on behalf of any beneficiary under the educational services plan;

SECTION 12. Tennessee Code Annotated, Section 49-7-805, is amended by adding the following as a new subdivision (12) and by redesignating the subsequent subdivisions accordingly:

(12) Impose limits on the amount of contributions which may be made on behalf of any beneficiary under the educational savings plan;

SECTION 13. Tennessee Code Annotated, Section 49-7-805, is amended by deleting the current subdivision (16) in its entirety and by substituting instead the following:

Enter into agreements with any public or private employer under which an employee may agree to have a designated amount deducted in each payroll period from the wages or salary due the employee for the purpose of purchasing tuition units pursuant to a tuition contract or for the purpose of making contributions to a savings account established pursuant to a tuition contract. Any such agreement shall be subject to the approval of the board and in conformity with such terms and conditions as may be determined by the board. In the event such an agreement is approved by the board, the employer shall be responsible for submitting to the board such information and causing to be performed in respect to its employees such duties as shall be prescribed by the board in order to carry out the purchase of tuition units or the making of contributions by payroll deduction. All costs and expenses incidental to implementing and administering a payroll deduction program shall be borne by the respective employer.

SECTION 14. Tennessee Code Annotated, Section 49-7-806, is amended by deleting the same in its entirety and by substituting instead the following:

49-7-806. Tuition contracts. The board may enter into a tuition contract with a purchaser for the purchase of tuition units on behalf of a beneficiary through the educational services plan, or for the creation and deposit of contributions to a savings account through the educational savings plan, or both; provided that the total amount of contributions made to both plans on behalf of a single designated beneficiary does not exceed any limits imposed by the board pursuant to § 49-7-805.

SECTION 15. Tennessee Code Annotated, Section 49-7-807, is amended by deleting the same in its entirety and by substituting instead the following:

49-7-807. Educational Services Plan. (a) An educational services plan tuition contract entered into between the board and a purchaser shall allow the purchaser to purchase tuition units on behalf of a beneficiary at the price determined by the board pursuant to subsection (c) of this section for the year in which the tuition unit is purchased. Each tuition unit purchased on behalf of a beneficiary shall entitle the beneficiary to an amount equal to one percent (1%) of the weighted average tuition, as such term is defined in subsection (b) of this section, during the academic term in which it is used. Each tuition unit shall cover the cost of the beneficiary's tuition in an amount no greater than one percent (1%) of the weighted average tuition in effect at Tennessee's four-year public universities at the time of use.

(b) "Weighted average tuition" means the tuition cost resulting from the following calculation:

(1) Add the products of the annual undergraduate tuition at each Tennessee four-year public university multiplied by that institution's total number of undergraduate full-time equivalent students; and

(2) Divide the gross total of the products from subdivision (b)(1) of this section by the total number of undergraduate full-time equivalent students attending Tennessee's four-year public universities.

(c) The board shall develop a plan for the sale of tuition units. The board shall determine annually the weighted average tuition of Tennessee's four-year public universities in the academic year that begins on or after August 1 of the then current calendar year, and shall establish the price of a tuition unit in the ensuing sales period. Such price shall be based on sound actuarial principles, and shall, to the extent actuarially possible, reasonably approximate one percent (1%) of the weighted average tuition for the academic year, plus the costs of administering the educational services plan and any amount necessary to ensure the plan remains actuarially sound. The sales period to which such price applies shall consist of twelve (12) months, and the board shall establish the date on which the sales period begins. The board may impose and collect additional administrative fees and charges in connection with the sale of tuition units. To promote the purchase of tuition units and in accordance with actuarially sound principles, the board may adjust the sales price as part of incentive programs.

SECTION 16. Tennessee Code Annotated, Section 49-7-808(b), is amended by deleting the same in its entirety and by substituting instead the following:

(b) Each tuition unit purchased under an educational services plan tuition contract shall cover the cost of the beneficiary's tuition in an amount no greater than one percent (1%) of the weighted average tuition in effect at Tennessee's four-year public universities at the time of use. A savings account created under an educational savings plan tuition contract shall cover the cost of the beneficiary's tuition in an amount no greater than the redemption value of the account at the time of use.

SECTION 17. Tennessee Code Annotated, Section 49-7-809(b), is amended by deleting the last sentence thereof in its entirety.

SECTION 18. Tennessee Code Annotated, Section 49-7-809(d), is amended by deleting subdivisions (1) - (3) in their entireties and by substituting instead the following:

(1)(A) Refund to the person designated in the contract an amount equal to the value of the tuition benefits in the beneficiary's account that are not needed to cover tuition or other educational costs on account of the scholarship, waiver or similar subvention and which would have otherwise been paid during that academic term at the institution of higher education where the beneficiary is enrolled. The board may, at its sole option, designate the institution of higher education at which the beneficiary is enrolled as the agent of the board for purposes of refunds pursuant to this subdivision;

(B) If the scholarship, waiver of tuition or similar subvention has a duration that extends beyond one (1) academic term, the beneficiary may request a refund in advance of the scholarship payment. The amount of the refund payable to the person designated in the contract shall equal the value of the tuition benefits in the beneficiary's account that are not needed to cover tuition or other educational costs on account of the scholarship, waiver or similar subvention, minus a penalty on the earnings portion, if any, of the refund. The amount of such penalty shall be equal to the safe harbor penalty as provided under the regulations of the Internal Revenue Service which are applicable to the program. The refund provided by this subdivision (1)(B) shall be determined without regard to any time limits on the use of tuition benefits;

- (2) Retain the tuition benefits in the beneficiary's account for later use; or
- (3) Transfer the tuition benefits to a new beneficiary pursuant to such rules or regulations promulgated by the board pursuant to § 49-7-805(16).

SECTION 19. Tennessee Code Annotated, Section 49-7-809(e), is amended by deleting the word "units" wherever the same may appear in the first sentence thereof and by substituting instead the words "benefits under the program".

SECTION 20. Tennessee Code Annotated, Section 49-7-809(e), is further amended by deleting from the last sentence thereof the figures "49-7-810(b)" and by substituting instead the figures "49-7-812(b)."

SECTION 21. Tennessee Code Annotated, Section 49-7-810, is amended by deleting the same in its entirety and by substituting instead the following:

49-7-810. Creation of the Tennessee baccalaureate education system trust funds.

(a) There is hereby created two (2) Tennessee baccalaureate education system trust funds. One such trust fund shall consist solely of contributions received by the board from purchasers on behalf of beneficiaries pursuant to educational savings plan contracts or from any other source, public or private; all interest and investment income earned by the fund; any monetary gift of any nature made by any individual by testamentary disposition, including, without limitation, any specific monetary gift or bequeath made by will, trust or other disposition; and all other receipts of the board from any other source which the board determines appropriate. The second trust fund shall consist solely of payments received by the board from purchasers on behalf of beneficiaries pursuant to educational services plan contracts or from any other source, public or private; all interest and investment income earned by the fund; any monetary gift of any nature made by any individual by testamentary disposition, including, without limitation, any specific monetary gift or bequeath made by will, trust or other disposition; and all other receipts of the board from any other source which the board determines appropriate. The funds may be divided into separate accounts as may be determined by the board.

(b) The board shall maintain an account for each tuition contract showing the beneficiary of that contract. The account shall also show the number of tuition units purchased pursuant to that contract if the contract involves the educational services plan. If the contract involves the educational savings plan, the account shall also show the redemption value of that account.

(c) The assets of the funds shall be preserved, invested and expended solely pursuant to and for the purposes of this part and shall not be loaned or otherwise transferred or used for any other purpose. The assets of the funds shall be expended solely to:

- (1) Make payments to, or on behalf of, beneficiaries pursuant to § § 49-7-807(a) and 49-7-808(a);
- (2) Make refunds as provided in § 49-7-811; and
- (3) Pay the investment fees and other costs of administering the funds.

SECTION 22. Tennessee Code Annotated, Section 49-7-811, is amended by deleting the word “fund” wherever the same may appear and by substituting instead the word “funds”.

SECTION 23. Tennessee Code Annotated, Section 49-7-812, is amended by deleting the first sentence thereof in its entirety and by substituting instead the following: “The board shall establish an investment policy for each trust fund.”

SECTION 24. Tennessee Code Annotated, Section 49-7-812, is further amended by deleting the word “fund” wherever the same may appear in the second and third sentences thereof and by substituting instead the word “funds”.

SECTION 25. Tennessee Code Annotated, Section 49-7-813, is amended by deleting the figures “49-7-812” and by substituting instead the figures “49-7-814”.

SECTION 26. Tennessee Code Annotated, Section 49-7-813, is further amended by deleting the word “fund” wherever the same may appear and by substituting instead the word “funds”.

SECTION 27. Tennessee Code Annotated, Section 49-7-816(a), is amended by deleting the word “policy” wherever the same may appear and by substituting instead the word “policies”.

SECTION 28. Tennessee Code Annotated, Section 49-7-816(b), is amended by deleting the word “fund” and by substituting instead the word “funds”.

SECTION 29. Tennessee Code Annotated, Section 49-7-817(a), is amended by deleting from the first sentence thereof the words “assets of the trust fund” and by substituting instead the words “assets of either or both of the trust funds”.

SECTION 30. Tennessee Code Annotated, Section 49-7-817(b), is amended by inserting immediately before the word “fund” the word “respective”.

SECTION 31. Tennessee Code Annotated, Section 49-7-818(a), is amended by deleting from the first sentence thereof the words “trust fund” and by substituting instead the words “trust funds”.

SECTION 32. Tennessee Code Annotated, Section 49-7-818(d), is amended by deleting the word “fund” and by substituting instead the word “funds”.

SECTION 33. Tennessee Code Annotated, Section 49-7-820, is amended by deleting the words and punctuation “fund, and all tuition contracts and the units purchased pursuant thereto” and by substituting instead the words and punctuation “funds, and all tuition contracts and the units purchased or the monies accrued pursuant thereto”.

SECTION 34. Tennessee Code Annotated, Section 49-7-821, is amended by deleting the same in its entirety and by substituting instead the following:

49-7-821. Termination or modification of plans. If the board determines that either the educational savings plan or the educational services plan is, for any reason, financially unfeasible, or is not beneficial to the citizens of this State or to the state itself, the board may suspend or terminate the plan immediately.

SECTION 35. Tennessee Code Annotated, Section 49-7-822, is amended by deleting the word "program" wherever the same may appear in said section and by substituting instead the word "plan".

SECTION 36. Tennessee Code Annotated, Section 49-7-824(a), is amended by deleting the words "tuition units hereunder" and by substituting instead the words "tuition units or the making of contributions hereunder".

SECTION 37. Tennessee Code Annotated, Title 49, Chapter 7, Part 8, is amended by adding the following as new sections 49-7-808 and 49-7-809, respectively, and by redesignating the existing sections accordingly:

49-7-808. Educational Savings Plan. (a) An educational savings plan tuition contract entered into between the board and a purchaser shall allow the purchaser to deposit contributions to a savings account created by the board on behalf of a beneficiary. A savings account created on behalf of a beneficiary hereunder shall entitle the beneficiary to an amount equal to the funds on deposit in the account during the academic term in which the funds are needed to cover the beneficiary's tuition and other educational costs at the institution of higher education where the beneficiary is enrolled, not to exceed the redemption value of the account, as such term is defined in subsection (b) of this section.

(b) "Redemption value" means the cash value of the educational savings account attributable to the sum of the principal invested, the interest earned or losses incurred thereon, less any fees imposed by rule of the board.

(c) The board shall develop a plan for offering educational savings accounts. The plan shall include, but shall not be limited to, the vehicles for investing the contributions made to the accounts and the date on which the savings accounts shall be offered. The board may impose and collect administrative fees and charges in connection with the creation and maintenance of such accounts.

49-7-809. Tuition Contract Terms, Limitations and Disclosures. (a) The following information shall be disclosed in writing to each purchaser of a tuition contract:

(1) The terms and conditions for purchasing tuition units if the contract involves the educational services plan, or the terms and conditions for the making of contributions if the contract involves the educational savings plan;

(2) The name and date of birth of the beneficiary of the contract, and the terms and conditions under which another person may be substituted as the beneficiary;

(3) The person entitled to terminate the contract;

(4) The terms and conditions under which the contract may be terminated and the amount of the refund, if any, to which the person terminating the contract, or that person's designee, is entitled upon termination;

(5) The method by which tuition benefits under the program shall be applied toward payment of tuition and "other educational costs", as defined in § 49-7-802(6);

(6) The period of time during which the beneficiary must claim benefits through the program;

(7) If the contract involves the educational services plan, the obligation of the board to make payments on behalf of a beneficiary under § 49-7-807(a) based upon the number of tuition units purchased on behalf of the beneficiary, or if the contract involves the educational savings plan, the obligation of the board to make payments on behalf of a beneficiary under § 49-7-808(a) based upon the redemption value accrued on behalf of the beneficiary;

(8) The terms and conditions under which money may be wholly or partially withdrawn from the program, including, but not limited to, any reasonable charges and fees that may be imposed for withdrawal;

(9) The obligation of the board to pay directly to the institution of higher education in which the beneficiary is enrolled the tuition benefits being used that term for tuition and "other educational costs", as defined in § 49-7-802(6); and

(10) Such other terms, conditions, and provisions the board considers, in its sole discretion, to be necessary or appropriate.

(b) Notwithstanding any other law to the contrary, the board may provide in a tuition contract that the tuition benefits being used for the payment of tuition and other educational costs be paid directly to the beneficiary or to the entity to whom the charges are owed; provided that:

(1) such direct payments are authorized under the sections of the Internal Revenue Code which are applicable to the program; and

(2) the board receives proper documentation showing that such charges have been or will be incurred by the beneficiary.

SECTION 38. Tennessee Code Annotated, Section 49-7-804(a), is amended by deleting the word and figure "eight (8)" and by substituting instead the word and figure "nine (9)".

SECTION 39. Tennessee Code Annotated, Section 49-7-804(a), is further amended by deleting subdivisions (7) and (8) thereof in their entireties and by substituting instead the following:

(7) The Executive Director of the Tennessee Student Assistance Corporation, ex officio;

(8) The Executive Director of the Tennessee Higher Education Commission, ex officio; and

(9) One (1) representative of the Tennessee Independent Colleges and Universities Association appointed by the State Treasurer from a list of two (2) nominees submitted by the Board of Directors of the Tennessee Independent Colleges and Universities Association. Such representative shall be appointed for a term of three (3) years. Any person so appointed shall be eligible for reappointment and shall serve until a successor qualifies.

SECTION 40. Tennessee Code Annotated, Title 49, Chapter 7, Part 8, is amended by adding the following as a new, appropriately designated section:

49-7-8____. Scholarship Programs. (a) The state or any department, division or agency thereof may establish a scholarship program to award scholarships to students which consist of contributions and earnings accrued in a savings account created through the educational savings plan established pursuant to § 49-7-808. Any scholarship program established under this section shall be registered with the board.

(b) Notwithstanding any provision of this part to the contrary, the entity establishing and maintaining a scholarship program under this section shall not be required to select the scholarship beneficiary at the time the scholarship program is established. Provided, however, the entity establishing the scholarship program shall select the scholarship beneficiary and notify the board of the same by no later than thirty (30) calendar days prior to the start of the academic term in which the tuition benefits under the program are to be applied. The notification shall be in writing and shall include the name, address and social security number of the scholarship beneficiary, the amount of the redemption value of the account awarded, and a statement specifying whether the scholarship beneficiary may receive a refund under the provisions of this part. The entity establishing the scholarship program shall select the scholarship beneficiaries in accordance with criteria established by the entity.

(c) If a scholarship beneficiary does not use tuition benefits awarded hereunder within a length of time as specified under the scholarship program, the entity may select and award such benefits to a new beneficiary.

(d) The board may, through the promulgation of rules and regulations, authorize political subdivisions of the state and organizations that are exempt from federal income taxation under § 501 (a) and described in § 501 (c)(3) of the Internal Revenue Code to establish scholarship programs pursuant to the provisions of this section.

SECTION 41. Tennessee Code Annotated, Section 49-7-804(a), is amended by deleting the word and figure "eight (8)" and by substituting instead the word and figure "nine (9)".

SECTION 42. Tennessee Code Annotated, Section 49-7-804(a), is further amended by deleting subdivisions (7) and (8) thereof in their entirety and by substituting instead the following:

(7) The Executive Director of the Tennessee Student Assistance Corporation, ex officio;

(8) The Executive Director of the Tennessee Higher Education Commission, ex officio; and

(9) One (1) representative of the Tennessee independent colleges and universities association appointed by the State Treasurer from a list of two (2) nominees submitted by the Board of Directors of the Tennessee independent colleges and universities association. Such representatives shall be appointed for a term of three (3) years. Any person so appointed shall be eligible for reappointment and shall serve until a successor qualifies.

SECTION 43. Tennessee Code Annotated, Title 49, Chapter 7, Part 8, is amended by adding the following as a new, appropriately designated section:

49-7-8 __. Scholarship Programs. (a) The state or any department, division or agency thereof may establish a scholarship program to award scholarships to students which consist of contributions and earnings accrued in a savings account created through the educational savings plan established pursuant to § 49-7-808. Any scholarship program established under this section shall be registered with the board.

(b) Notwithstanding any provision of this part to the contrary, the entity establishing and maintaining a scholarship program under this section shall not be required to select the scholarship beneficiary at the time the scholarship program is established. Provided, however, the entity establishing the scholarship program shall select the scholarship beneficiary and notify the board of the same by no later than thirty (30) calendar days prior to the start of the academic term in which the tuition benefits under the program are to be applied. The notification shall be in writing and shall include the name, address and social security number of the scholarship beneficiary, the amount of the redemption value of the account awarded, and a statement specifying whether the scholarship beneficiary may receive a refund under the provisions of this part. The entity establishing the scholarship program shall select the scholarship beneficiaries in accordance with criteria established by the entity.

(c) If a scholarship beneficiary does not use tuition benefits awarded hereunder within a length of time as specified under the scholarship program, the entity may select and award such benefits to a new beneficiary.

(d) The board may, through the promulgation of rules and regulations, authorize political subdivisions of the state and organizations that are exempt from federal income taxation under §501(a) and described in §501(c)(3) of the Internal Revenue Code to establish scholarship programs pursuant to the provisions of this section.

SECTION 44. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 45. This act shall take effect upon becoming a law, the public welfare requiring it, provided that no funds shall be received or tuition contracts entered into relative to the educational savings plan until such time as the board of the baccalaureate education system trust fund program shall determine.

PASSED: May 13, 1999


JIMMY RAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 25th day of May 1999


DON SUNDQUIST, GOVERNOR